



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1 OAK PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 8, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by W.S. and J.S., agents. The Tenants attended the hearing on their own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, W.S. testified that the Notice of Dispute Resolution Hearing package was served on the Tenants by registered mail. On behalf of the Tenants, T.M. acknowledged receipt of these documents on November 15, 2019. I find the Tenants received the documents on that date. The Tenants did not submit documentary evidence in response to the Application.

The parties were in attendance and were prepared to proceed. The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed that a fixed-term tenancy began on July 1, 2018 and ended on June 30, 2019, and continued on a month-to-month basis thereafter. W.S. testified the Tenants gave notice to end the tenancy on September 1, 2019, which the Tenants did not dispute. The parties agreed the Tenants vacated the rental unit on or before September 30, 2019. During the tenancy, rent in the amount of \$1,400.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$200.00, which the Landlord holds.

On behalf of the Landlord, W.S. testified that on receipt of the Tenants' notice to end the tenancy the Tenants were advised that it was not effective until October 31, 2019. However, the Tenants vacated the rental unit on or before September 30, 2019 and did not pay rent when due on October 1, 2019. Further, W.S. testified that the Landlord did everything possible to re-rent the unit but was unable to do so until December 2019. A number of Facebook advertisements were submitted into evidence in support.

In reply, the Tenants acknowledged rent was not paid on October 1, 2019. However, T.M. testified that the Landlord agreed the Tenants would not have to pay rent on October 1, 2019 if the Landlord was able to secure a new tenant for the unit.

In addition, T.M. referred to issues with respect to an elderly neighbour, responsibility for lawn maintenance, and the suitability of the yard for the Tenants' two dogs.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 45(1) of the *Act* confirms a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In other words, a notice to end tenancy issued by a tenant is effective on the last day of the month following the month in which the notice is received by the landlord.

Further, section 26(1) of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

In this case, I find that the fixed-term tenancy that ended on June 30, 2019 continued on a periodic basis as of July 1, 2019. Further, I find that the Tenants' notice to end the month-to-month tenancy was received by the Landlord on September 1, 2019. As a result, in accordance with section 45(1) of the *Act*, the notice was effective to end the tenancy on October 31, 2019. I accept that the Landlord took reasonable steps to minimize losses and re-rent the unit but was unable to do so until December 2019. As a result, and in accordance with section 26(1) of the *Act*, I find that rent in the amount of \$1,400.00 became due and payable on October 1, 2019. As confirmed by T.M. during the hearing, this has not been paid. Therefore, I find the Landlord is entitled to a monetary award for unpaid rent due on October 1, 2019 in the amount of \$1,400.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$600.00, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Unpaid rent (October 1-31, 2019):	\$1,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$700.00)
<i>LESS</i> pet damage deposit:	(\$200.00)
<b>TOTAL:</b>	<b>\$600.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$600.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2020

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Residential Tenancy Branch